BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

DECISION OF THE BOARD

In the Matter of the Petitions for Redetermination Under the Hazardous Substances Tax Law of SRI INTERNATIONAL *Petitioner*

Appearances:

For Petitioner	Mr. H. Kruth General Counsel
For Department of Toxic Substances Control:	Derek Van Hoorn Staff Counsel
For Department of Special Taxes and Operations, State Board of Equalization:	Janet Vining Tax Counsel

This Decision considers the merits of petitions for redetermination, filed pursuant to Revenue and Taxation Code Section 43301, of a hazardous waste facility fee, imposed by Health and Safety Code Section 25205.2, for fiscal years 1987–88, 1988–89, 1989–90 and 1990–91. The Board heard the petitions for redetermination on October 2, 1992, in Sacramento, California, and took the matter under submission. The Board redetermined the matter on December 3, 1992, and issued notices of redetermination to Petitioner on January 25, 1993.

The issue before us is whether a research facility that accumulates small explosive scraps from its experiments, and then detonates those scraps in the same manner as it conducts its regular experiments, is subject to the facility fee imposed in Health and Safety Code Section 25205.2. We hold that it is not.

Petitioner conducts research for federal agencies and operates a test site where it conducts shock physics experiments involving explosive materials. Prior to 1988, Petitioner accumulated the small, odd-shaped pieces of explosives left after an experiment, and detonated them in small quantities. These detonations were carried out in essentially the same manner as Petitioner's detonations for experimental purposes. In May of 1988, Petitioner redesigned its operations so that it could utilize the scraps in the experiments.

In a Decision and Recommendation dated December 31, 1991, Appeals Attorney H. L. Cohen found that the Department of Toxic Substances Control had determined that the scraps were hazardous waste. He also found that the detonation of the scraps constituted the treatment of hazardous waste. The Appeals Attorney concluded that Petitioner was subject to the facility fee as a treatment facility for fiscal years 1987–88 and 1988–89.

However, the Appeals Attorney also found that Petitioner was not subject to the facility fee for the subsequent fiscal years, since, in 1988, it ceased treating the explosive scraps and instead incorporated them into ongoing experiments. Under the unique circumstances of this case, no further activities were required to complete the closure of the treatment facility and, thus, no additional facility fee could be imposed.

We need not address the Appeals Attorney's conclusion regarding the closure of Petitioner's treatment operation, since we find that Petitioner's accumulation of small explosive scraps from its experiments, and detonation of those scraps in the same manner as Petitioner conducted its regular experiments, did not constitute the treatment of hazardous waste. We therefore conclude that Petitioner was not liable for the facility fee in any of the fiscal years at issue.

For the reasons set forth in this Decision, the petitions for redetermination are granted.

Adopted at Torrance, California, this 8th day of September, 1993.

Brad Sherman, Chairman
Matthew K. Fong, Member
Ernest J. Dronenburg, Jr., Member
Windie Scott, Member
Attested by: Burton W. Oliver, Executive Director